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Our Reference: /
Date: 16 February 2015

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For Attention: **Minister Faith Muthambi**
The Minister responsible for the Films and Publications Board
Pretoria

URGENT

Honourable Minister Muthambi

REQUEST FOR URGENT APPEAL TO APPEAL TRIBUNAL: CLASSIFICATION BY THE FILMS AND PUBLICATION BOARD (“THE FPB”) OF ‘FIFTY SHADES OF GREY’ (“THE MOVIE”) WITH AGE RESTRICTION OF 16 L N S.

We refer to the above stated matter. The purpose of this letter is to call on the minister to appeal the decision by the FPB to classify the movie 16 L N S to the appeal tribunal for the reasons set out in this letter.

REASONS FOR DECISION BY FPB

On 11 February 2015 we became aware of the fact that the movie was rated 16 L N S (“the rating”). We subsequently requested the FPB by email to provide us with information on the classification of the movie, to confirm the rating, and if so, whether it could still be appealed against.

In response to our aforesaid email, we were informed by the FPB in an email containing a press statement that the FPB note the *“complaints and concerns from certain sectors of society, regarding the*

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16 LNS rating of the Film 50 shades of Grey, in particular that the rating be increased to 18” and that the FPB “stands by the decision made by the classification committee who rated the Film 16 LNS”.

The reasons for the FPB’s decision in regards to the rating, as set out in their aforesaid press statement, were the following:

1. *“In this regard we have also made comparisons with other jurisdiction that have classified the same film. The United Kingdom gave this version an 18 rating. The United States has stated that the film maker has made two versions of the film. The US therefore has a cinema version rated at 17 (equivalent to South Africa’s 16) and an explicit 18 version. In Australia, the film was rated MA15+ by the Australian Classification Board for "strong sex scenes, sexual themes and nudity. In Canada, the film was rated at 18 and in the province of Quebec the film was rated 16+ category.”*
2. *“In arriving at 16 LNS rating, the Classification Committee was guided by the Classification Guidelines promulgated in terms of the Films and Publications Act, 65 of 1996. These guidelines are from public and stakeholder input. South Africa will release the theatrical (cinema friendly) version.”*

The FPB furthermore also advised us, in the same email, that the *Films and Publications Act* (“the Act”) only provides for the distributor or film maker to apply for an appeal, that the FPB may not escalate public complaints to the appeal tribunal and that members of the public can direct their complaints to the minister.

REASONS FOR REQUEST TO APPEAL

We hereby demand that the minister appeal the decision made by the FPB (to rate the movie 16 L N S) to the appeal tribunal since we are of opinion that the FPB failed and/or neglected, as is apparent from its reasons, to get to grips with and deal with two vital issues, namely:

1. The fact that the theme or contextual setting of the movie’s plot is that of a dysfunctional and abusive intimate partner relationship. More specifically, the fact that the movie deals with a

heterosexual couple whose relationship is characterised by bondage, domination, sadism, control, manipulation and emotional abuse of the woman by the man which amounts to nothing less than domestic violence. This general relational condition is then also expressed in sexual behaviour (BDSM). In this regard see attached hereto the blog post by Ms Rosie Waterland dated 12 February 2015 and can be found at <http://www.mamamia.com.au/rogue/fifty-shades-of-grey-review-rosie-waterland/> as annexure "A";

2. The fact that the movie's content possibly falls within the definition of "pornography" as set out in the *Sexual Offences Act 31 of 2007* ("the SO Act"). The definition of "pornography" as defined in section 1 of *the SO Act*, as read together with section 19 of the same act, states that if a person unlawfully and intentionally exposes or displays or causes the exposure or display of any image, publication, depiction, description or sequence of pornography or any image, publication, depiction, description or sequence containing a visual presentation, description to a child, with or without the consent of the child, is guilty of the offence of exposing or displaying or causing the exposure or display of pornography to a child.

In the light of the aforesaid we remind the minister that the FPB is mandated in terms of the Act to:

1. provide consumer advice to enable adults to make informed viewing, reading and gaming choices, both for themselves and for children in their care;
2. protect children from exposure to disturbing and harmful materials and from premature exposure to adult experiences.

In our view the abovementioned theme and content of the movie violates various constitutional rights, inter alia the rights to human dignity, security of the person and the best interest of the child and might even amount to a contravention of a criminal prohibition. What is especially disconcerting is that South Africa is a country marred with violence and most notably abuse and violence against women which should never be condoned or promoted. The FPB's failure to decide on an appropriate rating results in exactly what the South African society should resist at all cost, namely the promotion and incitement of violence and abuse of women and the premature exposure of children (of 16 and 17 in this case) to material which condones abuse and violence against women. In this regard we respectfully submit that

the FPB has failed the people they are mandated to assist (parents) and protect (children aged 16 and 17).

In addition to the above, it should be mentioned that although we welcome the FPB's regard for foreign decisions on the rating of the movie (albeit only for its persuasive value), we submit that the approach followed by the FPB to comparative jurisdictions would not survive constitutional muster. In *H v Fetal Assesment Centre (CCT 74/14)* the constitutional court confirmed and summarised certain principles that need to be taken into account when making use of foreign law in order to interpret the Bill of Rights. It is however clear that the FPB did not take these principles and considerations into account when it considered foreign law for the purpose of rating the movie and do we submit that if these principles were taken into account, the FPB could possibly have come to the following conclusions which could have had an effect on the end result:

1. Jurisprudence from countries not under a system of constitutional supremacy and jurisdictions with very different constitutions will not be as valuable as the jurisprudence of countries founded on a system of constitutional supremacy and with a constitution similar to ours. Canada and the United States are the only countries used by the FPB for comparative reasons that has a system of constitutional supremacy like that of South Africa. Canada is also the only country used by the FPB who has a limitation clause similar to the one incorporated in our Bill of Rights. Therefore, Canada and countries with a similar constitutional dispensation and constitution as ours should have preference when made use of for comparative purposes. For instance, New Zealand would have been a better choice than the UK or Australia for comparative purposes since they also have a system of constitutional supremacy and a limitation clause incorporated in its constitution;
2. Having regard to foreign law, courts must be cognisant both of the historical context out of which our Constitution was born and our present social, political and economic context. In the present matter we respectfully submit that the FPB should have taken into account the social, political and economic context of South Africa, a country marred with poverty and prevalence of violence and abuse against women, as mentioned earlier.

In the light of the above, we took it upon ourselves to investigate the reasons given by the classification boards in the Canadian provinces of Alberta, Ontario, Manitoba and British Columbia and attached it

hereto as annexure "B" for the minister's consideration. In each of the aforesaid Canadian provinces the movie was rates as 18A. We are however aware of the rating given by the classification board of Quebec (Canada), namely 16+, but it was not possible for us to get hold of more information on this rating since the relevant section of the aforesaid classification board's website was out of order at the time we browsed it (see <http://www.rcq.qc.ca/>).

We therefore implore the minister, as we hereby do, to appeal the classification to the appeal tribunal in order to have the classification raised to at least 18 L N S. We furthermore specifically request, due to the constitutional interests involved, that the appeal and rectification of the classification be undertaken and completed as a matter of urgency **before 20 February 2015** since this date is the start of the next week-end when many 16 and 17 year old children will be at risk of exposure.

We await your urgent response.

Yours faithfully

CAUSE FOR JUSTICE

Per: **WW VILJOEN**
CHAIRPERSON